

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 MICHAEL MCMAHON, ET AL.,

7 Defendant.

-----x 21-CR-265 (PKC)

United States Courthouse
Brooklyn, New York

June 16, 2023
9:00 a.m.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE PAMELA K. CHEN
UNITED STATES DISTRICT JUDGE
BEFORE A JURY

11 APPEARANCES

12 For the Government: UNITED STATES ATTORNEY'S OFFICE
13 Eastern District of New York
271 Cadman Plaza East
14 Brooklyn, New York 11201
BY: CRAIG HEEREN, AUSA
MEREDITH ARFA, AUSA
15 IRISA CHEN, AUSA

16 DEPARTMENT OF JUSTICE
17 NATIONAL SECURITY DIVISION
950 Pennsylvania Avenue NW
18 Washington, D.C., 20530
BY: CHRISTINE ANN BONOMO, ESQ.

19 For Defendant McMahon: GIBBONS P.C.
20 One Gateway Center
Newark, New Jersey 07102
21 BY: LAWRENCE S. LUSTBERG, ESQ.
GENNA AUTUMN CONTI, ESQ.

22 Court Reporter: Georgette K. Betts, RPR, FCRR, CCR
23 Phone: (718) 804-2777
Email: Georgetteb25@gmail.com

24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription

PROCEEDINGS

1 APPEARANCES: (Cont'd.)

2 For Defendant Zheng: GOLDBERGER & DUBIN P.C.
3 401 Broadway, Suite 306
4 New York, New York 10013
BY: RENEE MELINDA WONG, ESQ.

5 For Defendant Zhu: KEVIN KERVENG TUNG P.C.
6 136-20 38th Avenue, Suite 3D
7 Flushing, New York 11354
BY: KEVIN K. TUNG, ESQ.

8 * * * * *

9 (The jury deliberations continued at 9:00 a.m.)

10 (Court in recess awaiting the verdict of the jury.)

11 (In open court; Jury not present.)

12 THE COURT: So good morning, everyone. I assembled
13 you because we were apprised of an issue this morning with
14 respect to one of the jurors. Juror number 9 reported to
15 Ms. Gonzalez that she found posted on her home, materials
16 yesterday regarding the CCP, the Communist Party. She wasn't
17 the only one though in her neighborhood who received these
18 materials. Apparently, they were posted all over the
19 neighborhood. She obviously looked at them because she
20 reported what they were. She also told Ms. Gonzalez that she
21 found some of the images, and I guess there were images or
22 descriptions, disturbing. She also did say that she didn't
23 feel the material affects her ability --

24 THE COURTROOM DEPUTY: I didn't ask her that.

25 THE COURT: Sorry, I should say this, she didn't

PROCEEDINGS

1 feel intimidated. Right, let me correct that, she didn't feel
2 intimidated by the receipt of these I assume, in part, because
3 she wasn't the only who received them.

4 She also commented, though, she doesn't live in
5 predominantly Asian neighborhood, so she has no understanding
6 of why these were posted on her door.

7 It seems to me we need to bring her in here to
8 inquire further as to what happened and obviously ask
9 questions to determine if she feels she can still continue to
10 deliberate and be a juror in the case fairly and impartially
11 despite what happened to her yesterday.

12 So we'll bring her in here now. We'll tell the rest
13 of the jurors that they have to wait with their deliberations
14 and suspend them until we decide how to proceed, because they
15 can't deliberate without her.

16 So any objection to proceeding in that manner?

17 MR. HEEREN: No, your Honor. Can I just ask to
18 confirm that she did not speak to any of the other jurors
19 about it and you have told her not to.

20 THE COURT: Right. What happened is Ms. Gonzalez
21 did ask her that and she said no, she had not spoken to anyone
22 and then she was instructed not to speak about this to anyone.
23 So as far as we know she has not.

24 MR. HEEREN: And then I guess a separate question
25 which is sort of ancillary to the main point, but did she

PROCEEDINGS

1 provide a copy to the court?

2 THE COURT: No, she didn't bring them with her today
3 as far as I know, but I'll ask her what she did with them.

4 MR. HEEREN: Thank you.

5 THE COURT: And what we can do also is, if there are
6 further questions you want to ask, we can always sidebar
7 before we let her go back to the jury room. Go ahead.

8 MR. LUSTBERG: I just wanted to make sure I
9 understood. So this post note -- it's not posted like on her
10 computer, it was posted --

11 THE COURT: Physically. These are papers that were
12 physically posted on her door. Now, I interpreted that to
13 mean she lives in a house as opposed to an apartment because
14 she seemed to know that other similar postings were done
15 throughout the neighborhood.

16 THE COURTROOM DEPUTY: No, in her building.

17 THE COURT: Oh, in her building. Oh, I'm sorry I
18 apologize. So I misunderstood, Ms. Gonzalez. So I guess in
19 her building so she must live in an apartment and therefore
20 saw that postings were made on other apartments in the
21 building.

22 All right. Let's go ahead and get her and then, as
23 I said, if after my initial questions to her the parties want
24 to discuss anything, we'll do so at sidebar. And this was
25 juror number nine.

PROCEEDINGS

1 So everyone understands, I'm not going to ask her
2 her name or her address so I don't want anyone inquiring about
3 that or asking me to inquire about that. You have the
4 information obviously so it's not necessary to put it on the
5 record.

6 THE COURTROOM DEPUTY: All rise.

7 (Juror Number 9 enters courtroom.)

8 THE COURT: Come on in, have a seat up here in the
9 front, maybe in that first seat in the box.

10 So good morning to you.

11 JUROR NUMBER 9: Good morning.

12 THE COURT: I'm just going to refer to you by your
13 juror number, obviously, to protect your privacy.

14 My understanding, Juror Number 9, is that you
15 reported to Ms. Gonzalez this morning an unusual incident that
16 obviously relates to a topic perhaps in this case. So tell us
17 what happened exactly?

18 JUROR NUMBER 9: Well, normally when you get home
19 there's mail and people who -- they walk around and they leave
20 stuff at your door, but yesterday when I got home there was --
21 on the door handle there was a plastic see-through bag. On
22 the first page was sign CCP petition now. And I'm saying,
23 okay. And then it says, the Chinese Communist Party, you
24 know. Yeah, I took it inside and there were several fliers in
25 there but it seems like there is a group in the United States

PROCEEDINGS

1 that's asking people to sign a petition against the CCP. The
2 only reason I was concerned is that it was on my door and
3 we've been talking about the CCP in this whole discussion, so,
4 you know, and they showed what's happening to people in China
5 and even talking about people who are here in the United
6 States that, you know, that they may be abused or targeted or
7 whatever.

8 And, but I did check with my neighbors to see if
9 they got it as well. So I called last night and my neighbor
10 next door got it and this morning the other one I checked, so
11 on both sides of me they also got it. I didn't check with any
12 other people because I'm saying I'm sure if you're going to
13 leave it, you're not going to leave it just for me, it's going
14 to be on both sides, but it was concerning for me because of
15 the case, because of the case, I just felt I needed to say
16 something about it.

17 THE COURT: Right. No, and I greatly appreciate
18 that, you did exactly what you're supposed to do.

19 First I want to confirm that you haven't spoken to
20 any of the other jurors about this; is that correct?

21 THE PROSPECTIVE JUROR: I did not really speak to
22 them about, no.

23 THE COURT: When you say did not really, did you
24 speak at all?

25 JUROR NUMBER 9: I kind of mentioned briefly but no

PROCEEDINGS

1 one paid attention, they moved on to something else.

2 THE COURT: What did you say?

3 JUROR NUMBER 9: I just said, you know, I got --
4 something was on my door, I didn't describe what it was or
5 anything. I said it was just a concern for me and I want to
6 talk to Fida about it.

7 THE COURT: Did anyone ask you any follow up at all?

8 JUROR NUMBER 9: No, none at all.

9 THE COURT: You didn't reference CCP?

10 JUROR NUMBER 9: No, I did not.

11 THE COURT: Okay. Obviously, we ask that you not
12 speak about it to the jurors --

13 JUROR NUMBER 9: Okay, sure.

14 THE COURT: -- when we let you go back to the jury
15 room.

16 Do you remember how many pages you received?

17 JUROR NUMBER 9: There were three fliers and,
18 unfortunately, I put it in a bag to bring it in, but my mom
19 has Alzheimer's and she was having a bad morning --

20 THE COURT: I'm sorry.

21 JUROR NUMBER 9: -- so I just rushed out after
22 dealing with her and left it on the table. I was going to
23 bring it with me.

24 THE COURT: Okay. So it's still at your home?

25 JUROR NUMBER 9: It's still at my home, yes.

PROCEEDINGS

1 THE COURT: You said one or two of your neighbors
2 also --

3 JUROR NUMBER 9: Yes, yes.

4 THE COURT: How big of a building do you live in?

5 JUROR NUMBER 9: All private houses.

6 THE COURT: Oh, so it's a private house.

7 JUROR NUMBER 9: Yes.

8 THE COURT: And don't tell me any precise
9 information, but what borough are you in?

10 JUROR NUMBER 9: Brooklyn.

11 THE COURT: Brooklyn. And had you ever received any
12 CCP-related material before?

13 JUROR NUMBER 9: No. And the concern is because we
14 don't live in an area where they're Asian people live in. We
15 are in a mixed neighborhood but we've never really seen --
16 I've never seen any Asian people in my area. So I was really
17 saying well, how does this --

18 THE COURT: Happen.

19 JUROR NUMBER 9: -- happen or, you know, it's not
20 something you would expect to see.

21 THE COURT: What else do you remember about these
22 fliers what they said exactly or showed? Were there pictures
23 for example?

24 JUROR NUMBER 9: There were pictures, one picture.
25 There were different things people like who were abused or

PROCEEDINGS

1 burned, you know, different pictures. So just to show
2 different scenarios of people who were abused by the Chinese
3 Communist Party.

4 THE COURT: Did you get the sense that those
5 pictures or the statements related to what happened to people
6 in the China or the United States?

7 JUROR NUMBER 9: Yes, there was one that talked
8 about what happens here, where they said people could be --
9 you know, but that was just one of the 10 pictures on the
10 page.

11 THE COURT: So just to go through the fliers one
12 says, please sign a petition, right?

13 JUROR NUMBER 9: Yes, that was the first page of it
14 as you walked -- that was what was on the first. Then when
15 you opened the flier -- I didn't really look at all of --

16 THE COURT: Okay.

17 JUROR NUMBER 9: -- it because I just -- and there
18 was -- I think there was a business card in there too.

19 THE COURT: Of someone to contact?

20 JUROR NUMBER 9: I don't know. I just -- I just
21 pulled it out and I looked at it. I didn't really pay much
22 attention, I was just getting home and dealing with my mom.

23 THE COURT: Let me say this, it's good in a way that
24 you didn't study them because, as I have been instructing the
25 jury throughout, the idea is to avert your eyes or avoid

PROCEEDINGS

1 exposure to this kind of material so I appreciate the fact
2 that you did not --

3 JUROR NUMBER 9: I did not.

4 THE COURT: -- study them so closely.

5 JUROR NUMBER 9: Yes, I didn't even read the
6 whole -- you know, I just looked at it and I glanced at it and
7 put it back.

8 THE COURT: But the gist sounds like alerting you to
9 alleged abuses by the CCP in China --

10 JUROR NUMBER 9: Correct.

11 THE COURT: -- and then some conduct here.

12 Do you recall what conduct they were describing here
13 in the U.S. and if there was any relationship to obviously
14 what you've heard about during this trial?

15 JUROR NUMBER 9: No. I don't really recall that
16 there was anything.

17 THE COURT: So how did receiving the fliers make you
18 feel?

19 JUROR NUMBER 9: I was a bit concerned because I've
20 never really seen -- you know, it's not something that's
21 typical in my area and we are a close knit group. Everyone
22 talks to each other and the whole bit, that's why I called
23 them last night to see if anyone had received anything and
24 this morning.

25 THE COURT: Did you feel at all intimidated by the

PROCEEDINGS

1 receipt --

2 JUROR NUMBER 9: No.

3 THE COURT: -- these?

4 JUROR NUMBER 9: No.

5 THE COURT: Did you feel that anyone was trying to
6 influence you with respect to your role as a juror here?

7 JUROR NUMBER 9: I don't know. I -- you know I
8 really -- I'm not easily threatened by things, things like
9 that and basically, you know, I live next to police officers
10 and it was like, okay.

11 THE COURT: Nice to have them as neighbors.

12 JUROR NUMBER 9: Yes. Like two doors down, two
13 doors across, so we have a police officers in the area, stuff
14 like, so I really don't feel threatened. It's really a very
15 private -- and everyone looks out for each other and sees who
16 goes by, so I'm sure that if I ask people tomorrow they will
17 tell me who passed by and delivered.

18 THE COURT: That's great. Do you feel that your
19 ability to remain as juror and be fair and impartial in this
20 case, given the nature of the allegations and the evidence
21 you've seen, has been affected at all by your receipt of
22 these materials.

23 JUROR NUMBER 9: No, no, not at all.

24 THE COURT: Why do you say that --

25 JUROR NUMBER 9: I --

PROCEEDINGS

1 THE COURT: -- with such confidence?

2 JUROR NUMBER 9: I really didn't look at that, I
3 really didn't look at it. I just thought it was unusual
4 because I've never seen something like that before, but I mean
5 from where we are with the case I don't really see how it will
6 influence me in any way making a determination.

7 THE COURT: Okay. So I'll maybe be even more direct
8 about it.

9 JUROR NUMBER 9: Sure.

10 THE COURT: Obviously what you say you saw is -- are
11 allegations that the CCP abuses its Chinese citizens, right,
12 and also tries to do things perhaps to Chinese citizens in the
13 U.S. You don't think that those allegations in any way affect
14 your ability to be fair and impartial in this case when there
15 is an allegation that the Chinese government was trying to
16 repatriate Chinese citizens using the defendants or through
17 the defendants.

18 JUROR NUMBER 9: No, I really don't think so because
19 honestly my niece actually is -- she's gone to China, she's
20 lived in China, her fiance is from China, you know, so we have
21 relations. So I'm not really not concerned about you know
22 what how this will affect me.

23 THE COURT: Do you think it will make you feel
24 either more or less inclined to think the defendants committed
25 acts they're accused of in this case.

PROCEEDINGS

1 JUROR NUMBER 9: No. No. Not at all.

2 THE COURT: So hang tight for one second I just want
3 to talk to the parties at sidebar for one moment. Okay?

4 JUROR NUMBER 9: Okay.

5 THE COURT: Thanks for your patience.

6 (Continued on the next page.)

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SIDEBAR CONFERENCE

1 (The following occurred at sidebar.)

2 THE COURT: So first question to everyone, do you
3 want me to inquire further on anything?

4 MR. HEEREN: Nothing from the government.

5 MR. LUSTBERG: Nothing from McMahon.

6 MR. TUNG: Nothing from Zhu Yong.

7 MS. WONG: Nothing from Mr. Zheng, no.

8 THE COURT: Does anyone want me to excuse her?

9 MR. LUSTBERG: No.

10 THE COURT: Ms. Wong?

11 MS. WONG: No.

12 THE COURT: Mr. Tung?

13 MR. TUNG: No.

14 MR. HEEREN: No.

15 THE COURT: Thank you, all.

16 (End of sidebar conference.)

17 (Continued on the next page.)

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1 (In open court.)

2 THE COURT: Juror number 9, I thank you, first of
3 all, for reporting what happened and following the
4 instructions really to the T, much appreciated. And second,
5 we're going to let you go back to the deliberations --

6 JUROR NUMBER 9: Thank you.

7 THE COURT: -- and you'll continue on the jury.

8 Thank you very, very much.

9 JUROR NUMBER 9: Thank you.

10 THE COURTROOM DEPUTY: All rise.

11 (Juror Number 9 returns to the jury room to resume
12 deliberations.)

13 THE COURT: Have a seat everyone. I will say this,
14 jurors like Juror Number 9 reaffirm my confidence in the jury
15 system. Truly, I've seen the jurors in the hallway and they
16 really have just the best attitude. In fact, one person said
17 to me they'd like to volunteer to do jury service again, but
18 with the same group of people, they've had such an enjoyable
19 experience so far, so I think that's a good sign in terms of
20 them trying to work together and come to a solution -- or an
21 answer.

22 Thank you, everyone. We will let you know when we
23 get the next note.

24 MR. HEEREN: Thank you, Judge.

25 MR. LUSTBERG: Thank you.

1 (Court in recess awaiting the verdict of the jury.)

2 (Whereupon, the trial adjourned at 6:00 p.m. to

3 resume Tuesday, June 20th, 2023 at 9:00 a.m.)

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<p>JUROR NUMBER 9: [39] MR. HEEREN: [6] 2214/17 2214/24 2215/4 2225/4 2225/14 2226/24 MR. LUSTBERG: [4] 2215/8 2225/5 2225/9 2226/25 MR. TUNG: [2] 2225/6 2225/13 MS. WONG: [2] 2225/7 2225/11 THE COURT: [54] THE COURTROOM DEPUTY: [4] 2213/24 2215/16 2216/6 2226/10 THE PROSPECTIVE JUROR: [1] 2217/21</p> <hr/> <p>-</p> <hr/> <p>-----x [2] 2212/2 2212/7 -against [1] 2212/5</p> <hr/> <p>0</p> <hr/> <p>07102 [1] 2212/20</p> <hr/> <p>1</p> <hr/> <p>10 [1] 2220/9 10013 [1] 2213/3 11201 [1] 2212/13 11354 [1] 2213/6 136-20 [1] 2213/5 16 [1] 2212/5</p> <hr/> <p>2</p> <hr/> <p>20 [1] 2213/5 2023 [2] 2212/5 2227/3 20530 [1] 2212/17 20th [1] 2227/3 21-CR-265 [1] 2212/2 265 [1] 2212/2 271 [1] 2212/13 2777 [1] 2212/23</p> <hr/> <p>3</p> <hr/> <p>306 [1] 2213/2 38th [1] 2213/5 3D [1] 2213/5</p> <hr/> <p>4</p> <hr/> <p>401 [1] 2213/2</p> <hr/> <p>6</p> <hr/> <p>6:00 [1] 2227/2</p> <hr/> <p>7</p> <hr/> <p>718 [1] 2212/23</p> <hr/> <p>8</p> <hr/> <p>804-2777 [1] 2212/23</p> <hr/> <p>9</p> <hr/> <p>950 [1] 2212/17 9:00 [3] 2212/5 2213/9 2227/3</p>	<p>A 3948</p> <p>a.m [3] 2212/5 2213/9 2227/3 ability [3] 2213/23 2222/19 2223/14 abused [3] 2217/6 2219/25 2220/2 abuses [2] 2221/9 2223/11 accused [1] 2223/25 across [1] 2222/13 acts [1] 2223/25 address [1] 2216/2 adjourned [1] 2227/2 affect [2] 2223/13 2223/22 affected [1] 2222/21 affects [1] 2213/23 after [2] 2215/23 2218/21 against [2] 2212/5 2217/1 ahead [2] 2215/7 2215/22 aided [1] 2212/24 AL [1] 2212/6 alerting [1] 2221/8 allegation [1] 2223/15 allegations [3] 2222/20 2223/11 2223/13 alleged [1] 2221/9 always [1] 2215/6 Alzheimer's [1] 2218/19 AMERICA [1] 2212/3 ancillary [1] 2214/25 ANN [1] 2212/18 answer [1] 2226/21 apartment [2] 2215/13 2215/19 apartments [1] 2215/20 apologize [1] 2215/18 Apparently [1] 2213/18 APPEARANCES [2] 2212/11 2212/25 appreciate [2] 2217/17 2221/1 appreciated [1] 2226/4 apprised [1] 2213/13 area [4] 2219/14 2219/16 2221/21 2222/13 ARFA [1] 2212/14 around [1] 2216/19 Asian [3] 2214/5 2219/14 2219/16 assembled [1] 2213/12 assume [1] 2214/2 attention [2] 2218/1 2220/22 attitude [1] 2226/16 ATTORNEY'S [1] 2212/12 AUSA [3] 2212/14 2212/14 2212/15 AUTUMN [1] 2212/21 Avenue [2] 2212/17 2213/5 avert [1] 2220/25 avoid [1] 2220/25 awaiting [2] 2213/10 2227/1</p> <hr/> <p>B</p> <hr/> <p>back [4] 2215/7 2218/14 2221/7 2226/5 bad [1] 2218/19</p>	<p>bag [2] 2216/21 2218/18 basically [1] 2222/9 best [1] 2226/16 Betts [1] 2212/22 big [1] 2219/4 bit [2] 2221/19 2221/22 BONOMO [1] 2212/18 borough [1] 2219/9 box [1] 2216/9 boy [1] 2222/21 briefly [1] 2217/25 bring [5] 2214/7 2214/12 2215/2 2218/18 2218/23 Broadway [1] 2213/2 Brooklyn [4] 2212/4 2212/13 2219/10 2219/11 building [5] 2215/16 2215/17 2215/19 2215/21 2219/4 burned [1] 2220/1 business [1] 2220/18</p> <hr/> <p>C</p> <hr/> <p>Cadman [1] 2212/13 called [2] 2217/9 2221/22 card [1] 2220/18 case [8] 2214/10 2216/16 2217/15 2217/15 2222/20 2223/5 2223/14 2223/25 CAUSE [1] 2212/8 CCP [8] 2213/16 2216/22 2217/1 2217/3 2218/9 2219/12 2221/9 2223/11 CCP-related [1] 2219/12 CCR [1] 2212/22 Center [1] 2212/20 check [2] 2217/8 2217/11 checked [1] 2217/10 CHEN [2] 2212/9 2212/15 China [6] 2217/4 2220/6 2221/9 2223/19 2223/20 2223/20 Chinese [6] 2216/23 2220/2 2223/11 2223/12 2223/15 2223/16 CHRISTINE [1] 2212/18 citizens [3] 2223/11 2223/12 2223/16 close [1] 2221/21 closely [1] 2221/4 commented [1] 2214/4 committed [1] 2223/24 Communist [3] 2213/16 2216/23 2220/3 computer [2] 2212/24 2215/10 computer-aided [1] 2212/24 concern [2] 2218/5 2219/13 concerned [3] 2217/2 2221/19 2223/21 concerning [1] 2217/14 conduct [2] 2221/11 2221/12 conference [1] 2225/16 confidence [2] 2223/1 2226/14</p>
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E	Gateway [1] 2212/20 GENNA [1] 2212/21 Georgette [1] 2212/22 Georgette25 [1] 2212/23 GIBBONS [1] 2212/19 gist [1] 2221/8 given [1] 2222/20 glanced [1] 2221/6 gmail.com [1] 2212/23 goes [1] 2222/16 GOLDBERGER [1] 2213/2 Gonzalez [5] 2213/15 2213/20 2214/20 2215/18 2216/15 good [5] 2213/12 2216/10 2216/11 2220/23 2226/19 government [3] 2212/12 2223/15 2225/4 great [1] 2222/18 greatly [1] 2217/17	I idea [1] 2220/25 images [2] 2213/21 2213/21 impartial [2] 2222/19 2223/14 impartially [1] 2214/10 in [53] incident [1] 2216/15 inclined [1] 2223/24 influence [2] 2222/6 2223/6 information [2] 2216/4 2219/9 initial [1] 2215/23 inquire [3] 2214/8 2216/3 2225/3 inquiring [1] 2216/2 inside [1] 2216/24 instructed [1] 2214/22 instructing [1] 2220/24 instructions [1] 2226/4 interpreted [1] 2215/12 intimidated [3] 2214/1 2214/2 2221/25 IRISA [1] 2212/15 issue [1] 2213/13
J	Jersey [1] 2212/20 JUDGE [2] 2212/9 2226/24 June [2] 2212/5 2227/3 juror [11] 2213/14 2214/10 2215/25 2216/7 2216/13 2216/14 2222/6 2222/19 2226/2 2226/11 2226/14 jurors [7] 2213/14 2214/13 2214/18 2217/20 2218/12 2226/14 2226/15 jury [12] 2212/10 2213/9 2213/10 2213/11 2215/7 2218/14 2220/25 2226/7 2226/11 2226/14 2226/17 2227/1 JUSTICE [1] 2212/16	2

K	need [1] 2214/7 needed [1] 2217/15 neighbor [1] 2217/9 neighborhood [5] 2213/17 2213/19 2214/5 2215/15 2219/15 neighbors [3] 2217/8 2219/1 2222/11 never [4] 2219/15 2219/16 2221/20 2223/4 Newark [1] 2212/20 next [5] 2217/10 2222/9 2224/6 2225/17 2226/23 Nice [1] 2222/11 niece [1] 2223/19 night [2] 2217/9 2221/23 nine [1] 2215/25 none [1] 2218/8 normally [1] 2216/18 note [2] 2215/9 2226/23 Nothing [4] 2225/4 2225/5 2225/6 2225/7 number [8] 2213/14 2215/25 2216/7 2216/13 2216/14 2226/2 2226/11 2226/14 Number 9 [3] 2216/14 2226/11 2226/14 NW [1] 2212/17	2222/16 2226/18 perhaps [2] 2216/16 2223/12 person [1] 2226/16 petition [3] 2216/22 2217/1 2220/12 Phone [1] 2212/23 physically [2] 2215/11 2215/12 picture [1] 2219/24 pictures [5] 2219/22 2219/24 2220/1 2220/5 2220/9 PKC [1] 2212/2 Plaintiff [1] 2212/4 plastic [1] 2216/21 Plaza [1] 2212/13 point [1] 2214/25 police [2] 2222/9 2222/13 post [1] 2215/9 posted [6] 2213/15 2213/18 2214/6 2215/9 2215/10 2215/12 postings [2] 2215/14 2215/20 precise [1] 2219/8 predominantly [1] 2214/5 present [1] 2213/11 privacy [1] 2216/13 private [3] 2219/5 2219/6 2222/15 proceed [1] 2214/14 proceeding [1] 2214/16 Proceedings [1] 2212/24 produced [1] 2212/24 protect [1] 2216/13 provide [1] 2215/1 pulled [1] 2220/21 put [3] 2216/4 2218/18 2221/7
L	last [2] 2217/9 2221/23 LAWRENCE [1] 2212/21 leave [3] 2216/19 2217/13 2217/13 left [1] 2218/22 less [1] 2223/24 live [6] 2214/4 2215/19 2219/4 2219/14 2219/14 2222/9 lived [1] 2223/20 lives [1] 2215/13 look [3] 2220/15 2223/2 2223/3 looked [3] 2213/19 2220/21 2221/6 looks [1] 2222/15 LUSTBERG [1] 2212/21	
M	mail [1] 2216/19 main [1] 2214/25 manner [1] 2214/16 many [1] 2218/16 material [3] 2213/23 2219/12 2221/1 materials [3] 2213/15 2213/18 2222/22 maybe [2] 2216/9 2223/7 MCMAHON [3] 2212/6 2212/19 2225/5 mean [2] 2215/13 2223/4 mechanical [1] 2212/24 MELINDA [1] 2213/3 mentioned [1] 2217/25 MEREDITH [1] 2212/14 MICHAEL [1] 2212/6 misunderstood [1] 2215/18 mixed [1] 2219/15 mom [2] 2218/18 2220/22 moment [1] 2224/3 more [2] 2223/7 2223/24 morning [8] 2213/12 2213/13 2216/10 2216/11 2216/15 2217/10 2218/19 2221/24 moved [1] 2218/1 Mr. Zheng [1] 2225/7 Ms. Gonzalez [5] 2213/15 2213/20 2214/20 2215/18 2216/15 Ms. Wong [1] 2225/10 much [3] 2220/21 2226/4 2226/8 must [1] 2215/19	objection [1] 2214/16 obviously [8] 2213/19 2214/8 2216/4 2216/13 2216/16 2218/11 2221/13 2223/10 occurred [1] 2225/1 OFFICE [1] 2212/12 officers [2] 2222/9 2222/13 Oh [3] 2215/17 2215/17 2219/6 open [2] 2213/11 2226/1 opened [1] 2220/15 opposed [1] 2215/13
N	name [1] 2216/2 NATIONAL [1] 2212/16 nature [1] 2222/20 necessary [1] 2216/4	P.C [3] 2212/19 2213/2 2213/5 p.m [1] 2227/2 page [5] 2216/22 2220/10 2220/13 2224/6 2225/17 pages [1] 2218/16 paid [1] 2218/1 PAMELA [1] 2212/9 papers [1] 2215/11 part [1] 2214/2 parties [2] 2215/23 2224/3 Party [3] 2213/16 2216/23 2220/3 passed [1] 2222/17 patience [1] 2224/5 pay [1] 2220/21 Pennsylvania [1] 2212/17 people [13] 2216/19 2217/1 2217/4 2217/5 2217/12 2219/14 2219/16 2219/25 2220/2 2220/5 2220/8
		2222/16 2226/16 relations [1] 2223/21 relationship [1] 2221/13 remain [1] 2222/19 remember [2] 2218/16 2219/21

R RENEE [1] 2213/3 repatriate [1] 2223/16 reported [3] 2213/14 2213/20 2216/15 Reporter [1] 2212/22 reporting [1] 2226/3 respect [2] 2213/14 2222/6 rest [1] 2214/12 resume [2] 2226/11 2227/3 returns [1] 2226/11 right [6] 2214/1 2214/20 2215/22 2217/17 2220/12 2223/11 rise [2] 2216/6 2226/10 role [1] 2222/6 room [3] 2215/7 2218/15 2226/11 RPR [1] 2212/22 rushed [1] 2218/21	3951 supposed [1] 2217/18 suspend [1] 2214/14 system [1] 2226/15	work [1] 2226/20
	T table [1] 2218/22 talks [1] 2221/22 targeted [1] 2217/6 terms [1] 2226/19 therefore [1] 2215/19 these [7] 2213/17 2214/2 2214/6 2215/11 2219/21 2222/3 2222/22 they'd [1] 2226/17 they've [1] 2226/18 though [2] 2213/17 2214/4 thought [1] 2223/3 threatened [2] 2222/8 2222/14 three [1] 2218/17 through [3] 2216/21 2220/11 2223/16 throughout [2] 2215/15 2220/25 tight [1] 2224/2 today [1] 2215/2 together [1] 2226/20 told [2] 2213/20 2214/19 tomorrow [1] 2222/16 took [1] 2216/24 topic [1] 2216/16 TRANSCRIPT [2] 2212/8 2212/24 transcription [1] 2212/24 trial [3] 2212/8 2221/14 2227/2 tries [1] 2223/12 Truly [1] 2226/15 trying [3] 2222/5 2223/15 2226/20 Tuesday [1] 2227/3 TUNG [3] 2213/5 2213/6 2225/12 typical [1] 2221/21	Y yesterday [3] 2213/16 2214/11 2216/20 Yong [1] 2225/6
	Z Zheng [2] 2213/2 2225/7 Zhu [2] 2213/5 2225/6	
S saying [3] 2216/22 2217/12 2219/17 says [2] 2216/23 2220/12 scenarios [1] 2220/2 seat [3] 2216/8 2216/9 2226/13 second [2] 2224/2 2226/4 SECURITY [1] 2212/16 see [5] 2216/21 2217/8 2219/20 2221/23 2223/5 see-through [1] 2216/21 sees [1] 2222/15 sense [1] 2220/4 separate [1] 2214/24 service [1] 2226/17 several [1] 2216/24 she [28] show [1] 2220/1 showed [2] 2217/4 2219/22 sidebar [5] 2215/6 2215/24 2224/3 2225/1 2225/16 sides [2] 2217/11 2217/14 sign [4] 2216/22 2217/1 2220/12 2226/19 similar [1] 2215/14 solution [1] 2226/20 sorry [3] 2213/25 2215/17 2218/20 sort [1] 2214/25 sounds [1] 2221/8 speak [5] 2214/18 2214/22 2217/21 2217/24 2218/12 spoken [2] 2214/21 2217/19 statements [1] 2220/5 STATES [8] 2212/1 2212/3 2212/3 2212/9 2212/12 2216/25 2217/6 2220/6 stenography [1] 2212/24 still [3] 2214/9 2218/24 2218/25 study [2] 2220/24 2221/4 stuff [2] 2216/20 2222/13 Suite [2] 2213/2 2213/5	U U.S [2] 2221/13 2223/13 understood [1] 2215/9 unfortunately [1] 2218/18 UNITED [8] 2212/1 2212/3 2212/3 2212/9 2212/12 2216/25 2217/5 2220/6 unusual [2] 2216/15 2223/3 us [1] 2216/16	V verdict [2] 2213/10 2227/1 volunteer [1] 2226/17
	W wait [1] 2214/13 walk [1] 2216/19 walked [1] 2220/14 Washington [1] 2212/17 whole [3] 2217/3 2221/6 2221/22 why [3] 2214/6 2221/22 2222/24 without [1] 2214/15 WONG [2] 2213/3 2225/10	